

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5491 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

THE EXECUTIVE ENGINEER, IRRIGATION DEPARTMENT

Versus

SHRI JAGDISH BHIKHALAL SORATIA C/O.SURENDARNAGAR JILLA
PANCHAYAT

Appearance:

MS MAMTA VYAS for Petitioner
MS DT SHAH for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/04/97

ORAL JUDGMENT

Challenge is made by petitioner by this Special Civil Application, to the Award of the Labour Court, Surendranagar, dated 14th February 1991 made in Reference (LCS) No.611/89.

2. Under the Award impugned, the termination of the workman-respondent was held to be illegal and award of

reinstatement with 50% backwages was made. Further, Rs.100/- were awarded as costs to the workman.

3. One of the contentions raised by Ms.Mamta Vyas, learned counsel for the petitioner is that the Labour Court has committed serious illegality by passing the Award of reinstatement with 50% backwages in favour of respondent and the same is wholly arbitrary and unjustified as it was not a case of retrenchment. The provisions of Section 2(oo)(bb) of the Industrial Disputes Act, 1947, were attracted in the present case and as such, while dispensing with the services of the workman-respondent, compliance of provisions of Section 25F of the I.D. Act, 1947, was not required to be made. It has further been contended that this point was specifically raised by the petitioner in the written statement as well as in the written arguments submitted before the Labour Court but the Labour Court, while deciding the matter, even has not referred to those arguments, what to say to consider the same. The learned counsel for the petitioner, placed for perusal of the Court, zerox copy of Ex.16, written arguments. The Labour Court, in para-7 of the Award, made reference to the written arguments of petitioner, Ex.16.

4. On the other hand, the learned counsel for the respondent, Smt.D.T.Shah, contended that such point has to be pleaded and proved and then only the applicability of Section 2(oo)(bb) of the I.D. Act, 1947, can be examined. In this case, the petitioner has not produced any evidence to prove the contention. So, at the most, it is a case where pleadings are there but the same are not proved. The learned counsel for the respondent placed reliance on the decision of this Court in Special Civil Application No.4965 of 1989 decided on 24th September 1992.

5. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties. The learned counsel for the respondent does not dispute that the petitioner has pleaded the point of applicability of Section 2(oo)(bb) of the I.D. Act, 1947. The learned counsel for the respondent also does not dispute that this point has been raised by petitioner in the written arguments also. Whether there is sufficient evidence or not to prove this pleading made by the petitioner is a fact which has to be considered by the Labour Court and not by this Court. In the case in hand, though a point has been raised by the petitioner, both in the written statement and in written arguments, the Labour Court has not even referred the same, what to

say to consider it. So it is a case where a point though raised, was not considered and as such, it is an error apparent on the face of the order of the Labour Court, which cannot be allowed to stand. The point raised goes to the root of the case and as such, it has to be considered by the Labour Court. The matter would have been different where on merits, on consideration thereof, the point was not accepted. In view of this fact, this Court cannot allow to stand this Award.

6. In the result, this Special Civil Application succeeds in part and the Award of the Labour Court, Surendranagar, dated 14th February 1991, made in Reference (LCS) No.611/1989, is set aside and the matter is remitted to the Labour Court, Surendranagar, to decide the matter afresh after hearing both the parties on merits. It shall be open to both the parties, if they so desire, to produce additional and/or further evidence, both documentary or oral, in support of the points raised. It shall also be open to both the parties to raise all the points available to them before the Labour Court and the Labour Court shall consider the same and pass the Award. It is expected of the Labour Court to decide the matter within a period of four months from the date of receipt of certified copy of this order. It is further made clear that in case in pursuance of the order of the Labour Court, the workman is reinstated in service, then he shall continue in service till the matter is finally decided in the Labour Court. Rule is made absolute in aforesaid terms with no order as to costs.

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(sunil)